

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of Petition :  
                  of :  
FIRST FACTORS CORPORATION :  
for redetermination of deficiency of :  
franchise tax under Article 9-A of :  
the tax law for the fiscal year ended :  
April 30, 1969. :  
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First Factors Corporation having filed petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the fiscal year ended April 30, 1969, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, on May 11, 1973 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Mr. C. Rowntree, Assistant Vice-President of the taxpayer, appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated under the laws of New York State on May 14, 1956.

(2) The Corporation Tax Bureau issued a statement of audit adjustment and notice of deficiency dated December 15, 1972 computed as follows:

<u>Fiscal Year Ended April 30, 1969</u>	
Federal net income	\$202,457.84
Plus New York State franchise tax deducted in computing Federal net income	356.85
Total	202,814.69
Less adjusted net operating loss deduction	1,777.94
Adjusted entire net income	201,036.75
Tax at 7%	14,072.57
Tax reported	350.97
Deficiency	13,721.60

(3) First Factors Corporation had incurred net operating losses as follows:

<u>Fiscal Year Ended</u>	<u>New York State Net Operating Loss</u>	<u>Federal Net Operating Loss</u>
4/30/66	\$ 420.39	\$ 445.39
4/30/67	354.22	379.22
4/30/68	<u>1,003.33</u>	<u>1,028.33</u>
TOTAL	\$1,777.94	\$1,852.94

(4) On July 2, 1965, The Challenger Oil Company, a Texas corporation which was not taxable for New York State franchise tax purposes, filed a petition for reorganization under Chapter X of the Bankruptcy Act in the United States District Court for the Southern District of Texas. The court approved a plan for reorganization and on April 21, 1969 ordered that title to the property dealt with by the plan be vested in The Challenger Oil Corporation, a New York corporation formed on September 17, 1968. On April 24, 1969 the New York corporation was merged into First Factors Corporation. The New York corporation filed a franchise tax return for the period September 17, 1968 to April 24, 1969 showing no assets, liabilities or activity and paid a minimum tax of \$100.00. It did not file an income tax return with the U.S. Treasury Department for such period.

(5) The Texas corporation had sustained net operating losses for Federal purposes as follows:

<u>Year</u>	<u>Net Operating Loss</u>
1963	\$ 31,749.00
1964	52,961.00
1965	11,453.00
1966	91,428.00
1967	<u>29,597.00</u>
TOTAL	\$217,188.00

(6) Section 208.9(f) of Article 9-A of the tax law reads in part:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of internal revenue code of nineteen hundred fifty-four, . . . except that . . . (2) such deduction shall not include any net operating loss sustained during . . . any taxable year in which the taxpayer was not subject to the tax imposed by this article . . . ."

The State Tax Commission hereby

DECIDES:

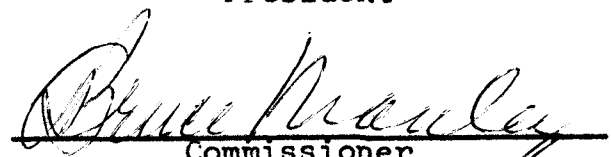
(A) The Texas corporation, The Challenger Oil Company, was not subject to New York State franchise tax during the entire period of its existence. Accordingly, net operating losses sustained by such corporation are not deductible in computing the entire net income of any successor corporation.

(B) The notice of deficiency is affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York  
this 20th day of September 1973.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner